IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3920 of 2001

to

FIRST APPEALNo 3922 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

URMILABEN CHHATRASINH NAHARSINH

Appearance:

MR AY KOGJE, for the appellants.

MR RN SHAH for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE Y.B.BHATT

Date of decision: 12/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The fountain source leading to this group of three appeals under section 54 of the Land Acquisition Act, 1894 (Act) is, the notification under section 4(1), dated 12.11.89 under the Act for acquisition of the lands of village Agawada, Tal: Dahod, Dist: Panchmahal, by virtue of which, the lands of respondents, original claimants, came to be acquired for the purpose of Agawada Irrigation Tank Project (Project), which was followed by notification under section 6(1). The Special Land Acquisition Officer by passing award under section 11 of the Act, dated 9.6.1992, considered and offered price of acquired lands at the rate of Rs.6000 per hector (Rs.0.60 per sq. mtr.) as market value for Jarayat Land and Rs.100 per hector for kharaba land. The claimants, having not accepted the award under section 11, desired for reference under section 18 of the Act. Therefore, reference were made to the District Court, Panchmahal at Godhra. The reference Court, upon consideration of all the facts and circumstances and the evidence, passed award on 28.9.2000, whereby the Court allowed all the three references, partly, and fixed the market price of the acquired land at Rs.12 per sq. mtr. and also the statutory benefits and entitlements under the Act. The State of Gujarat and the officers in charge of the acquisition have filed this group of three appeals, challenging the legality and validity of the award under section 18 of the Reference Court.

We have heard the learned advocates appearing for the parties. We have, also, dispassionately, examined the entire record. We have, also, considered the relevant proposition of law.

The learned AGP, Mr.Kogje, on behalf of the appellant, has, forcefully, contended that the reference Court had committed serious error in placing reliance on sale instances which are, as such, not comparable as they are private transactions and for small parcels of and. He has, also, placed reliance on two decisions of this Court to which reference will be made by us, hereinafter, as and when required at an appropriate stage.

Learned advocates appearing for the original claimants-respondents before us, has supported the impugned awards and the determination of the market value by the reference Court.

We have gone through the entire documentary evidence on which both the sides have relied on. It may be mentioned at this stage, that the appeals were remanded to the reference court for fresh consideration and thereafter the reference Court has considered the evidence, again, led by the parties and has fixed the market value at Rs.12 per sq. mtr. in respect of the lands acquired.

Reliance is placed on sale deed produced, at Ex.53 (Ex.23 before remand) which is in respect of a sale transaction of parcel of land admeasuring 2120 sq. mtrs. situated in village Katwara for Rs.31,000/- adjacent to village Agawada, which is dated 29.7.87 and it is in respect of part of the properties bearing revenue survey No.208. Ex.54 is also a sale deed. It is dated 23.6.87 in respect of 2020 sq. mtrs. of land being part of revenue survey No.262 for Rs.30,000/-. The claimants, also, relied on the evidence of witness Shyamalsinh, at Ex.48 in whose evidence, Ex.53 and 54 are proved. Witness Shyamalsinh was working as Chairman of Agricultural Produce Market Committee, Dahod. The lands covered by Ex.54, sale deed, are situated in Agawada. Both these sale deeds, clearly go to show that the agricultural lands were sold at the rate of Rs.14.85 ps. per sq. mtr. Both the sale deeds which were used as sale instances of past are in respect of non-agricutural lands. Since they are two years prior to the date of notification in the group of these matters, the reference Court considered them as comparable sale instances and awarded Rs.12 per sq. mtr. and also other statutory benefits and entitlement including solatium.

In order to determine the amount of compensation in terms of the statutory provisions of section 23 of the Act, the reference Court is obliged to consider various factors and circumstances for the purpose of fixing and determining the market value of the land acquired. There are various methods of valuation of land for the purpose of consideration and determination of compensation. The reference Court adopted the market value on the basis of comparative sale instances of the past. No doubt, in case of lands market value is ascertained, on the basis of value obtainable by sale of adjacent lands, with similar advantages. This is one of the modes of determination of market value and resultant compensation. It is a settled proposition of law that the compensation is required to be assessed according to the value of the land given to the owners. The principles and factors which are required to be examined, analysed and scrutinised by the Court for the purpose of arriving at just and reasonable market value and amount of

compensation have been extensively explored and very well settled.

For the purpose of determination of market value, comparable sale method of valuation is permissible and is one of the important methods. If the comparable sale or previous awards are more than one, whether average price fetched in all the comparable sales should form the price basis for determination of the market value of the acquired land or price fetched for the nearest or closest of the comparable sale should alone form the price basis for determination of the market value of the acquired land is the real point requiring our consideration and adjudication in this group of appeals.

If comparable sale methods of valuation of land is accepted or adopted by the Court for determination of market value of an acquired parcel of land, it generally hold good for determination of value of land acquired. The principle to fix reasonable and fair market value with reference comparable sale is to reduce the element of speculation. It must be remembered and noted that in a method of this kind or in a comparable sale, general features are of four kinds:

(i) It must be within a reasonable period of time of date of the relevant notification

(ii) It should be bonafide transactions;

(iii) It should be a sale of land acquired or land adjacent to the land acquired; and

(iv) It should possess similar advantages particularly with reference to its location and size.

Obviously, what is fair and reasonable market price is also a question of fact depending upon the type of evidence, the nature of documents relied on and the circumstances and probabilities in each case. It has been held in number of cases that the guiding star would be the conduct of the hypothetically willing vendor who would offer the lands and the willing purchaser in normal human conduct, who would be willing to abide as a prudent man, the normal market condition as on the date of the notification under section 4(1) of the Act. It is, in this context, therefore, when the Courts are called upon to examine this issue and determine the market value of the land in compulsory acquisition, the best evidence of the value of the property is the sale of acquired land which the claimants himself is a party and in its

absence, the sale of neighbouring land. The sale transactions should be, as far as possible, in or around the period of notification under section 4(1) for arriving at just and reasonable amount of market value. In this kind of method, one of the important factors is also the size of the land or plot covered under the sale which is sought to be relied on, as a comparable sale transaction. It cannot be gainsaid that for a small parcel of land, the buyers will be many. The marketability, utility and transferability of small parcels of land would be quick as for such parcels of land, many willing buyers are readily available. It is, in this context, reference Court is obliged to consider the extent of the land covered under the sale transaction and the extent of the land acquired, for the simple reason that for big parcel of land, frequent and easy transaction are rare. For example, in the present group of appeals, the extent of land acquired is about 1,00,632 sq. mtrs. excluding kharaba land. How many buyers would be there in market for such big parcel of and ? As against that, the sale instances relied on and produced at Ex.53 and 54 (Old Ex.23 and 24) are only in respect of not more than 2100 sq. mtrs of land. It appears that the reference Court's attention was not invited to this vital aspect and because of which the reference Court fell in serious error in accepting the amount of consideration mentioned in the sale instances, ipso facto for the purpose of fixity of market value of the lands acquired. Of course, the ale instances are two years prior to the date of notification under section 4(1). Again, they are in respect of non-agricultural properties. It may be mentioned, to be fair to the reference Court, that the deduction is considered due to the difference between the nature of lands. However, at the same time, the reference Court ought to have taken into consideration the size, the extent and the resultant utility of the plots covered under the sale instances at Ex.54 and 54. If this aspect is taken into consideration, there is no dispute about the fact that the market value in respect of the lands acquired at the relevant time and date of notification under section 4(1) of the Act, in any, case, would not be more than Rs.10.50. It must be mentioned that the learned advocate Mr.Shah while appearing for the respondents, original-claimants, has also fairly not disputed the proposition of law and the resultant assessment of market value.

That is not all. There are two other subsequent decisions of this Court which are relied on by the appellants. It would be, therefore, appropriate to refer

to those two decisions which are placed on record. The factual profile and the judicial adjudication emerging from both the judgments may be articulated in the hereinbelow.

Judgment No.1:

F.A.No.2496/99 to 2500/99.
Date of Decision : 14.3.2000
Village: Agawada.
Dist: Panchmahal
Purpose : Agawada Mota Falis After Tank Project.
Date of notice under section 4 : 12.11.92
LAQ Award date : 8.10.93
Reference Court award : Rs.11.87.
Amount awarded by the High Court : Rs.10.50.

Judgment No.2:
F.A. No.2495/99.
Date of Decision : 14.3.2000
Village : Katwara
Purpose : Anushravan Pond & Tank.
Notice u/s. 4 : 13.7.1992
LAQ Award date : 8.10.93
Reference Court Award : Rs.16.02 per sq. mtr.
Amount awarded by the High Court : Rs.10.50 per sq. mtr.

It can very well be seen from the aforesaid particulars and information mentioned that this Court has accepted the determination of market value at the rate of Rs.10.50 ps. per sq. mtr. in respect of agricultural lands situated very close to the lands acquired in the same village Agawada and Katwara. It may be mentioned that Katwara village and village Agawada are adjoining with common boundaries. Factual profile also manifests the purpose of acquisition that land covered under the judgment No.1 of this Court was Agawada Mota Falia Tank Project. Similar is the purpose in judgment No.2 for acquisition of land. Of course, the date of notification as highlighted above would go to show that it is in the month of November 1992 in judgment No.1 and in the month of July in judgment No.2, whereas, the date of notification in respect of acquisition of land in this group of appeals under section 4(1) was on 12.11.89. It means that even after almost a period of three years, this Court has thought it fit, in its judicial adjudication to grant an amount of Rs.10.50 ps. by way of market value per sq. mtr. in case of non-agricultural land situated in the same village Agawada in one case and in the second judgment in the

adjoining land. So, the view which we have taken for determination of market value at the rate of Rs.10.50 ps. per sq. mtr. in respect of agricultural land for the purpose of assessment of compensation under section 23(1), in the light of the evidence on record of our aforesaid discussion, is also, supportable from the two decisions of this Court relating to the lands situated in the same village in one case and in the adjoining village in other case.

After having taken into consideration the aforesaid facts and circumstances, the evidence on record and rival submissions and the relevant proposition of law, we are of the clear opinion that the assessment of market value made by the reference Court at Rs.12 per sq. mtr. in respect of agricultural land is on higher side. Therefore, it is required to be reduced to Rs.10.50 per sq. mtr. and obviously, therefore, are required to be partly allowed and the awards are required to be modified. Instead of market value at the rate of Rs.12.00 per sq. mtr., we determine and fix at Rs.10.50 per sq. mtr. in respect of the lands covered under the same notification and for the same purpose and involved in this group of three appeals arising out of the common award under section 23(1), except for the kharaba land for which the award is not disturbed. Obviously, the claimants shall be entitled to statutory benefits and entitlements including solatium and interest thereon.

The appeals are, partly, allowed, accordingly. The awards shall stand modified. Considering the facts and circumstances of the case, parties are left to bear their own costs. Decree be drawn in all the three appeals.

(J.N.Bhatt, J.)

(Y.B.Bhatt, J.)
(vjn)